

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 974 of 1998

in

SPECIAL CIVIL APPLICATION NO 2503 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PATEL DAXABEN CHANDUBHAI

Versus

REGIONAL PASSPORT OFFICER

Appearance:

MR PT JASANI for Appellant

MS PROMILA SAFAYA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.M.KAPADIA

Date of decision: 05/09/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

1. Admitted. Ms. Promila Safaya appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for

final hearing today.

2. This LPA is directed against the order passed by learned Single Judge summarily dismissing Special Civil Application No. 2503 on June 24, 1998.

3. The appellant is the original petitioner. She filed the petition for appropriate writ, direction or order directing the authorities to correct the birth place of the petitioner from Antaroli to Bhatera, Taluka Kapadvanj, District Kheda. It is case of the appellant that she made application for the purpose of obtaining passport and respondent passport authority issued passport bearing No.44209233 which was issued on November 5, 1997. According to the appellant, at the time of making application for getting passport, school leaving certificate was produced to certify the birth date and birth place. So far as birth place is concerned, it was revealed from the school leaving certificate that she was born at Antaroli though really she was born at Bhatera at her maternal uncle's place.

4. It is also stated that all the family members of the appellant would be going abroad within a very short period. If necessary action will not be made she would be deprived of the right to go abroad along with her parents and hence she approached this Court.

5. Learned Single Judge was of the opinion that if the case of the petitioner/appellant was that there was some discrepancy between the school leaving certificate and certificate issued by Sarpanch, the later would prevail. The learned Single judge observed that in such a circumstance it was obligatory on the part of the petitioner to seek appropriate relief of declaration by filing suit in competent Civil Court. On that ground, the petition was dismissed.

6. Mr. Jasani, learned counsel for the appellant, submitted that in number of cases this Court has issued appropriate writ, directing respondent authorities to correct either date of birth or place of birth. One of such decisions which was relied upon by the learned counsel for the appellant was in SCA No. 2450 of 1990 decided by learned Single Judge on April 7, 1998. Learned counsel submitted that almost in similar circumstance, a prayer was made and a writ of mandamus was issued. In that case, in birth certificate, place of birth was shown as Harij, Mehsana but it was wrongly mentioned pursuant to the application made by petitioner as Dethroj, Mehsana. In these circumstances, the

petitioner prayed that the authorities may be directed to correct the place of birth of the petitioner to be mentioned at Harij, Mehsana instead of Dethroj, Mehsana. In that case there was only one certificate and the school leaving certificate had shown Harij, Mehsana as birth place whereas in the application petitioner had mentioned Dethroj, Mehsana. The said fact came to the notice of the petitioner and she requested the authorities to correct the same on the basis of school leaving certificate. The school leaving certificate was the only certificate in that case. But since the authorities did not take any action, the petitioner approached this Court and direction was issued. In the instant case, there are two certificates. In these circumstances, the order passed by the learned Single Judge cannot be termed as arbitrary or illegal. Learned Single Judge said that if the question requires investigation of facts, normally, in exercise of extraordinary jurisdiction under Article 226 of the Constitution, this Court will not undertake the task to resolve it. Said order cannot be said to be illegal or unlawful.

7. Mr. Jasani, learned counsel, has placed reliance on the provisions of Section 35 of the Evidence Act, 1872. He submitted that a certificate issued by local authority is admissible in evidence. According to him, certificate issued by local authority must have precedence and more evidentiary value than a school leaving certificate. In this connection, he also placed reliance on the decision of the Honourable the Supreme Court in Birad Mal Singhvi v. Anand Purohit, 1988 (Supp) SCC 604.

8. It is open to the appellant to raise all the points before the respondent authority. He may also place reliance on the provisions of Section 35 of the Evidence Act, 1872. Respondent authority will also consider the relevant statutory law and also the above decision and will pass appropriate order in accordance with law.

9. Mr. Jasani stated that the entire family of the appellant will be leaving India by the end of September 1998. He submitted that if the authority will not take appropriate action by passing appropriate order, serious prejudice will be caused to the appellant.

10. It is clarified that it is open to the appellant to point out these facts before respondent authorities and also to request respondent authorities to pass

appropriate order on the basis of the certificate issued by the local authority. As and when such an application is made, the authority will decide the same in the facts and circumstances of the case. Mrs. Safaya states that if such an application is made, the authority will decide the same as expeditiously as possible, preferably within 10 days from the receipt of the application.

11. The appeal is accordingly allowed to the above extent. In the facts and circumstances, however, there shall be no order as to costs.
